

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0260
Indiana Corporate Income Tax
For the Years 1993 Through 1999

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ISSUE

I. Ten-Percent Negligence Penalty.

Authority: IC 6-8.1-10-2.1; IC 6-8.1-10-2.1(d); 45 IAC 15-11-2(b); 45 IAC 15-11-2(c).

Taxpayer maintains that it is entitled to an abatement of the ten-percent negligence penalty imposed subsequent to an audit examination of taxpayer's 1993 through 1999 federal and state income tax returns.

STATEMENT OF FACTS

Taxpayer in its previous incarnation was in the business of leasing trucks, trailers, and other fleet vehicles. Following a corporate reorganization and a transfer of its physical assets to a related partnership entity, taxpayer is now – and at all times during the audit period – merely a passive participant in the partnership which holds these physical assets. Taxpayer is designated as the “general partner.”

During 2001, the Department of Revenue (Department) conducted an audit review of taxpayer's 1993 through 1999 federal and state income tax returns. The Department determined – and taxpayer agreed – that taxpayer and the partnership did not have a unitary relationship. Accordingly, a number of adjustments were made to correctly reflect the partnership income received from the non-unitary partner. In addition, the ten-percent negligence penalty was imposed on the ground that taxpayer had consistently failed to report the partnership income properly.

The taxpayer disagreed with the imposition of the penalty and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

DISCUSSION

I. Ten-Percent Negligence Penalty.

Taxpayer requests that the Department exercise its discretion to abate the ten-percent negligence penalty. Taxpayer believes that the request is justified on several grounds. Taxpayer states that it experienced significant turnover of its in-house tax personnel and that its new employees did not understand taxpayer's relationship with the partnership. In addition, taxpayer was involved in a number of acquisitions that complicated the taxpayer's compliance objectives. Further, some of the tax returns submitted during the audit period were prepared by several outside tax service providers also unfamiliar with taxpayer's business operations. Taxpayer maintains that at all times it acted in good faith in preparing its tax returns.

IC 6-8.1-10-2.1 requires that a ten-percent penalty be imposed if the tax deficiency results from the taxpayer's negligence. Departmental regulation 45 IAC 15-11-2(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is to "be determined on a case-by-case basis according to the facts and circumstances of each taxpayer." Id.

IC 6-8.1-10-2.1(d) allows the Department to waive the penalty upon a showing that the failure to pay the deficiency was based on "reasonable cause and not due to willful neglect." Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish "reasonable cause," the taxpayer must demonstrate that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed"

Without minimizing the difficulties taxpayer experienced in dealing with and managing its own employees, without ignoring the difficulties involved in accurately communicating with multiple outside tax service providers, and without underestimating the apparently complex relationship between itself and the partnership interest, the Department is unable to agree that these are circumstances under which abatement of the negligence penalty is appropriate. Taxpayer – a sophisticated, substantial, and experienced business entity – failed to correctly report its partnership income over a period of at least six years. The Department does not agree that such results are indicative of "ordinary business care and prudence" Id.

FINDING

Taxpayer's protest is respectfully denied.